

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MULTI PACKAGING SOLUTIONS, INC.,
Petitioner

v.

CPI CARD GROUP – MINNESOTA, INC.,
Patent Owner

Case IPR2017-01650
Patent 8,419,889

**PETITIONER'S UNOPPOSED MOTION TO EXPUNGE
CONFIDENTIAL INFORMATION UNDER SEAL**

Pursuant to 37 C.F.R. § 42.56, and authorization received via email from the Patent Trial and Appeal Board (the “Board”) on April 1, 2020, Petitioner Multi Packaging Solutions, Inc. (“MPS”) hereby moves for an order expunging protected documents filed under seal in this proceeding, namely the unredacted Patent Owner’s Response (Paper 18)¹ and Exhibits 2014-2018 and 2020. These documents all disclose and discuss information that is confidential to MPS. Patent Owner CPI Card Group – Minnesota, Inc. does not oppose this Motion.

The Board granted the Petitioner’s Motion to Seal Patent Owner’s Response, Exhibits 2014-2018 and 2020, such that they are treated as business confidential information and kept separate from the files of this proceeding (Paper 25). The Board further granted the Petitioner’s Unopposed Motion to Maintain Confidential Information under Seal until 45 days after the conclusion of all appeals. (Paper 41). The appeal to the Federal Circuit has concluded in a Rule 36 affirmance on March 16, 2020. Accordingly, Petitioner hereby moves to expunge the confidential information currently under seal.

If the Board is not inclined to grant this Motion, MPS respectfully requests a conference call with the Board to discuss the issues raised in this Motion before any information becomes irreversibly public.

¹ The redacted Patent Owner’s Response (Paper 19) can remain in the record.

I. BACKGROUND

Petitioner filed a motion to seal (Paper 23) certain portions of Patent Owner's Response and Exhibits 2014-2018 and 2020 because those documents contain highly confidential information belonging to a third party and to MPS, and the parties stipulated to the entry of the Board's default protective order. Finding good cause, the Board granted Petitioner's motion to seal with respect to Patent Owner's Response and Exhibits 2014-2018 and 2020, and entered the Board's default protective order to govern the exchange and disclosure of information during the trial in this proceeding. (Paper 25).

After the Board issued the Final Written Decision, Petitioner filed an Unopposed Motion to Maintain Confidential Information under Seal. (Paper 37). The motion sought an order to maintain documents with confidential information under seal, and extend the deadline to file a motion to expunge such documents to 45 days after conclusion of all appeals. Finding good cause, the Board granted Petitioner's request to extend the deadline to file a motion to expunge confidential information to 45 days after the conclusion of any appeals, including the appeal filed by Patent Owner on March 1, 2019 (Paper 41).

On March 16, 2020, the Federal Circuit entered a Rule 36 affirmance concluding the appeal filed by Patent Owner.

II. CONFIDENTIAL DOCUMENTS SHOULD BE EXPUNGED.

Petitioner requests that the unredacted Patent Owner's Response (Paper 18) and Exhibits 2014-2018 and 2020 be expunged from the record.

“A party seeking to maintain the confidentiality of information, however, may file a motion to expunge the information from the record prior to the information becoming public.” Trial Practice Guide, 77 Fed. Reg. at 48,761. The moving party has the burden to establish that it is entitled to the requested relief. 37 C.F.R. § 42.20(c).

“Confidential information” is protected from disclosure by statute. 35 U.S.C. § 316(a)(7). “Confidential information” is defined as “trade secret or other confidential research, development, or commercial information.” 37 C.F.R. § 42.2. The standard for granting a motion to seal confidential information is “for good cause.” 37 C.F.R. § 42.54. For example, where the details of the confidential business or commercial information are unimportant to the merits of the case and the public's interest in having access to such information is minimal, such information may be sealed for good cause. *See* 37 C.F.R. § 42.54(a)(7); Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760. Where the Final Decision does not rely (or only minimally relies) on the confidential information, the Board has granted motions to expunge, finding that there is limited public interest in the confidential information and the record is minimally affected. *See e.g., Unverferth*

Mfg. Co. v. J&M Mfg. Co., IPR2015-00758, Paper 29 at 2 (P.T.A.B. Sept. 30, 2015) (granting the motion because the final decision did not rely upon the exhibit 5 at issue and “the file and decision remain understandable in the absence of” the exhibit).

Confidential information will ordinarily become public after the final judgment in an IPR unless a Board grants a motion to expunge. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012). In the current proceeding, the confidential information in the record has been maintained under seal throughout the pendency of this proceeding. The Final Written Decision did not disclose the substance of the confidential information. (Paper 36, 33-35; Paper 41, 2). After the Final Written Decision, the Board found good cause to maintain the confidential information under seal, and extended the deadline to file a motion to expunge 45 days after the conclusion of any appeals. (Paper 41). The Federal Circuit appeal filed by the Patent Owner was concluded on March 16, 2020; and therefore, Petitioner’s Motion is timely filed. The details of the confidential information are unimportant to the merits of the case and the public’s interest in having access to such information is minimal, such information should be expunged for good cause.

Accordingly, Petitioner respectfully submit that good cause exists here and thus requests that the Board expunge the unredacted Patent Owner’s Response

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.